

**United States Department of Labor
Employees' Compensation Appeals Board**

B.S., Appellant

and

**DEPARTMENT OF THE NAVY, PICATINNY
ARSENAL, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 19-1006
Issued: November 14, 2019**

Appearances:

James D. Muirhead, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 8, 2019 appellant, through counsel, filed a timely appeal from an October 30, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to his accepted March 30, 2017 employment incident.

FACTUAL HISTORY

On April 4, 2017 appellant, then a 68-year-old engineer, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2017 he slipped and fell in the restroom during a power outage as there was no emergency lighting at the employing establishment while in the performance of duty. He alleged that he injured his back, leg, and hernia implants.

In April 3 and 5, 2017 notes, Dr. Anthony DePaola, an osteopath, reported appellant's slip and fall at work while in the restroom during a power outage and diagnosed pain and swelling of the right lower leg, acute midline low back pain, and lower abdominal pain.

On April 6, 2017 appellant underwent a right lower extremity Venous Doppler which demonstrated an abnormality in the popliteal vein, possibly a deep vein thrombosis (DVT).

In an April 18, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On April 19, 2017 appellant e-mailed the employing establishment and explained his health status and the events of March 30, 2017. He noted that he had undergone back surgery, and had experienced shingles from his left ear into his brain cavity such that his physician found him to be a fall risk and, therefore, he was generally working from home with one or two days a week in the office at the employing establishment. On March 30, 2017 around 2:30 or 3:00 p.m., there was a power outage at the employing establishment while appellant was in the restroom. He alleged that the restroom became a "black room" with no emergency lighting. Appellant rose from the toilet, began to feel light-headed, slipped, landed back on the toilet, and used the handicap bars to pull himself up. He then used his walking cane to feel his way out of the bathroom and saw light when he reached the hall. Appellant then made his way to his desk and left for the day. He indicated that he was experiencing pain in his stomach, legs, and back.

On April 19, 2017 Dr. DePaola diagnosed DVT and acute midline low back pain without sciatica. He examined appellant on May 8, 2017 and diagnosed lumbar degenerative disc disease. Dr. DePaola reported that, since appellant's fall at work, his disc disease had been exacerbated causing persistent back and right buttock pain. He noted that following appellant's back surgery he was pain free until the fall. Dr. DePaola diagnosed greater trochanteric bursitis and right wrist sprain after falling at work.

In a May 10, 2017 attending physician report (Form CA-20) Dr. DePaola noted that appellant slipped and fell while in the restroom during a power outage and diagnosed lumbar disc disease exacerbation, severe trochanteric bursitis, and wrist pain. He indicated by checking a box marked "yes" that appellant's conditions were caused or aggravated by his employment activity and noted that appellant fell off of a toilet and injured himself.

On May 10, 2017 appellant responded to OWCP's development questionnaire. He reiterated the history of the claimed March 30, 2017 employment incident noting that he was in a restroom stall when the power failed. Appellant attempted to rise and dress in the dark, but slipped on a slippery floor, fell back, and landed back on the toilet. He forced himself up by pulling on a handicap bar and used his cane to feel his way from the restroom to his desk. Appellant alleged reinjury to his back at his previous surgical site, right hip bursitis from landing on the toilet, as well as right wrist and thumb pain from breaking his fall.

By decision dated May 19, 2017, OWCP accepted that the March 30, 2017 employment incident occurred as alleged and that there was a diagnosed hernia condition. However, it denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted March 30, 2017 employment incident.

On June 15, 2017 appellant requested a review of the written record from an OWCP hearing representative. He provided additional medical evidence including May 30, June 29, and August 2, 2017 notes from Dr. DePaola repeating his previous diagnoses and conclusions.

In a May 31, 2017 note, Dr. Yevgeniy I. Khesin, a Board-certified neurologist, examined appellant due to low back pain. He noted appellant's history of injury on March 30, 2017 reporting that appellant was sitting on the toilet when the lights went out. Appellant got up and lost his balance falling backwards. He hurt his right hand trying to break his fall and injured his back by hitting the edge of the toilet. Appellant was initially unable to get up from the floor. Dr. Khesin reviewed appellant's June 22, 2015 and April 29, 2017 lumbar magnetic resonance imaging scans and found hardware from his 2015 lumbar surgery as well as herniated discs at L4-5 and L5-S1. He diagnosed post-traumatic lumbar radiculopathy following the March 30, 2017 fall. Dr. Khesin opined that appellant's fall caused microtrauma in the area of the 2015 lumbar surgery and resulted in exacerbation of pain.

On November 18, 2011 appellant underwent surgical repair of an incarcerated right inguinal and scrotal hernia. On August 21, 2012 he underwent emergency repair of an incarcerated left inguinal hernia. On July 14, 2015 appellant underwent an electromyogram (EMG) which demonstrated bilateral L4-5 radiculopathy. On November 10, 2015 he underwent L3-4 and L4-5 interlaminar decompression and insertion of interspinous fixation device.

Appellant also provided additional factual statements addressing his accepted March 30, 2017 employment incident. He asserted that his injuries were reasonably and logistically related to his employment incident.

By decision dated September 21, 2017, an OWCP hearing representative affirmed OWCP's May 19, 2017 decision finding that the medical evidence of record was insufficient to establish appellant's claim as it did not contain a rationalized physician's opinion explaining how his hernia was caused or aggravated by the accepted March 30, 2017 employment incident.

On February 21, 2018 appellant, through counsel, requested reconsideration of the September 21, 2017 OWCP decision. In a note dated October 23, 2017, Dr. DePaola diagnosed anxiety, low back pain, and hip pain.

On February 16, 2018 Dr. Richard N. Siegfried, Board-certified in anesthesiology and pain management, reviewed appellant's lumbar spine x-rays. He noted appellant's history and treatment of back pain since 2014. Dr. Siegfried reported that appellant was pain free for one year following his 2015 spine surgery until his workplace fall. He concluded that appellant's current symptoms were causally related to his workplace accident. Dr. Siegfried noted that the fall from standing height onto a hard surface could produce radicular pain from foraminal stenosis or facet mediated pain in the lumbar levels. He found that appellant's fall caused aggravation of his spinal stenosis resulting in nerve root trauma or trauma to the lumbosacral facet joints. Dr. Siegfried concluded that this was not the only potential cause for his pain, but was the "most likely."

By decision dated May 21, 2018, OWCP denied modification of the September 21, 2017 decision, finding that appellant had not provided rationalized medical opinion evidence sufficient to establish causal relationship between his diagnosed conditions and the accepted March 30, 2017 employment incident. It did not address Dr. Siegfried's February 16, 2018 report.

On June 4, 2018 appellant, through counsel, requested reconsideration of the May 21, 2018 decision. In support counsel resubmitted Dr. Siegfried's February 16, 2018 report.

By decision dated October 30, 2018, OWCP denied modification of the May 21, 2018 decision, finding that appellant had not provided rationalized medical opinion evidence sufficient to establish causal relationship between his conditions and the accepted March 30, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to his accepted March 30, 2017 employment incident.

In support of his claim, appellant submitted a February 16, 2018 report from Dr. Siegfried, in which he concluded that appellant's current symptoms are causally related to his workplace accident. Dr. Siegfried opined that the fall from standing height onto a hard surface could produce radicular pain from foraminal stenosis or facet mediated pain in the lumbar levels. He determined that appellant's fall caused aggravation of his spinal stenosis resulting in nerve root trauma or trauma to the lumbosacral facet joints. Dr. Siegfried concluded that this was not the only potential cause for his pain, but was the "most likely." The Board finds that this opinion is speculative in nature and that he did insufficiently explain how the accepted incident caused or aggravated the diagnosed condition.¹⁰ Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to a diagnosed condition, Dr. Siegfried's opinion is of limited probative value and insufficient to establish causal relationship.¹¹

Dr. Khesin noted appellant's history of injury on March 30, 2017 and diagnosed post-traumatic lumbar radiculopathy following the March 30, 2017 fall. He opined that appellant's fall

⁶ *Id.*

⁷ *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *M.J.*, Docket No. 17-0725 (issued May 17, 2018); see also *Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345 (1989).

¹⁰ *S.R.*, Docket No. 18-1295 (issued March 20, 2019); *G.M.*, Docket No. 18-0989 (issued January 3, 2019).

¹¹ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

caused microtrauma in the area of the 2015 lumbar surgery and resulted in exacerbation of pain. Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² The need for rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting lumbar and hernia conditions.¹³ As Dr. Khesin did not provide a rationalized medical opinion regarding causal relationship, his report is of limited probative value.¹⁴

In a series of notes, Dr. DePaola diagnosed DVT, acute midline low back pain without sciatica, lumbar degenerative disc disease, greater trochanteric bursitis and right wrist sprain. He reported that, since appellant's fall at work, appellant's disc disease had been exacerbated causing persistent back and right buttock pain. Dr. DePaola noted that following appellant's back surgery he was pain free until the fall. The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice.¹⁵ Thus, the Board finds that this report is insufficient to meet appellant's burden of proof.¹⁶

In a May 10, 2017 form report, Dr. DePaola noted that appellant slipped and fell while in the restroom during a power outage and diagnosed lumbar disc disease exacerbation, severe trochanteric bursitis, and wrist pain. He indicated by checking a box marked "yes" that appellant's conditions were caused or aggravated by his employment activity and noted that appellant fell off of a toilet and injured himself. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁷ Dr. DePaola provided no rationale for his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.¹⁸ As such, Dr. DePaola's May 10, 2017 report is also insufficient to discharge appellant's burden of proof.¹⁹

Dr. DePaola completed notes on April 3 and 5, 2017 reporting that appellant's slip and fall at work while in the restroom during a power outage and diagnosing pain. The Board has held that the assessment of pain is not considered a diagnosis as it merely refers to symptoms of the

¹² *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

¹³ *M.E., id.; S.H.*, Docket No. 17-1447 (issued January 11, 2018).

¹⁴ *M.E., id.; A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

¹⁵ *S.S.*, Docket No. 19-0675 (issued August 22, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁶ *S.S., id.*

¹⁷ *J.P.*, Docket No. 19-0702 (issued August 23, 2019); *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁸ *Id.*

¹⁹ *Id.*

underlying condition.²⁰ As such, the Board finds that these notes are insufficient to establish appellant's claim.

OWCP also received a number of diagnostic studies. However, the Board has explained that diagnostic studies lack probative value as they do not address whether the accepted employment incident caused any of the diagnosed conditions.²¹

Causal relationship is a medical question that must be established by probative rationalized medical opinion evidence from a physician.²² As appellant has not submitted such medical evidence, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to his accepted March 30, 2017 employment incident.

²⁰ *T.A.*, Docket No. 19-0289 (issued June 21, 2019); *T.J.*, Docket No. 18-1500 (issued May 1, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

²¹ *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

²² *S.S.*, *supra* note 15; *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board